

PUBLIC COPY

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: JUL 31 2003

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn, and the petition will be remanded for further action and consideration.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination . . .

* * *

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." The petition was filed on April 23, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

In denying the petition, the director stated "[t]he beneficiary has a Social Security Number, however, without W-2s and copies of the beneficiary's tax return, there is no evidence that the beneficiary ever worked for the petitioner. The record does not establish that the beneficiary has the required two years of experience in the religious occupation." The decision contains no further substantive discussion of the petitioner's evidence.

Contrary to the director's assertion, the record shows no Social Security Number for the beneficiary. The I-360 petition form indicates that the beneficiary overstayed a visitor's visa and has never been authorized to work in the US or assigned a Social Security Number. The director's minimal basis for denying the petition, therefore, rests on an incorrect assumption.

On appeal, in an effort to provide further evidence of the beneficiary's past employment, the petitioner submits photocopied time sheets that purport to document the beneficiary's hours worked from January 4, 1999 through August 11, 2002. The petitioner also submits copies of purported pay stubs, listing payments from the petitioner to the beneficiary in 1999 and 2002 (but not during the intervening years).

The petitioner has also submitted what counsel calls an "audited financial statement" for 2000, but the certified public accountant who has attested to the statement indicates that the statement is not audited. He states that he has only "reviewed" the statement, and specifies that "[a] review . . . is substantially less in scope than an examination in accordance with generally accepted auditing standards." The financial statement reflects \$4,200 in payments to an unidentified pastor.

Before rendering a new, more comprehensive decision, the director should give the petitioner the opportunity to provide contemporaneous corroboration of the above materials. For example, the payments shown in the purported pay stubs ought to correlate with bank records if the funds were withdrawn from a bank. If payments were made by check, then canceled checks should exist along with the bank statements. The petitioner has not indicated whether these payments to the beneficiary were reported to the Internal Revenue Service, and if not, explained why not. Payments to undocumented workers are not exempt from tax laws.

In short, the petitioner has not submitted contemporaneous evidence that can be verified by a third party such as a bank, the Internal Revenue Service, or some other disinterested entity that would have some kind of evidence that the beneficiary has worked as claimed, without engaging in disqualifying outside employment.

Also useful as contemporaneous evidence of the beneficiary's service as a pastor would be certified copies of government records, such as marriage documentation, attested by the beneficiary during the qualifying period in his capacity as pastor of the petitioning church.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.